

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1) VIDEO GAMING TECHNOLOGIES, INC.,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:17-cv-00454-GKF-jfj
	)	
1) CASTLE HILL STUDIOS LLC	)	
(d/b/a CASTLE HILL GAMING);	)	
2) CASTLE HILL HOLDING LLC	)	
(d/b/a CASTLE HILL GAMING); and	)	
3) IRONWORKS DEVELOPMENT, LLC	)	
(d/b/a CASTLE HILL GAMING)	)	
	)	
Defendants.	)	

**PLAINTIFF’S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN  
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7.2(h), Plaintiff Video Gaming Technologies, Inc. (“VGT”) respectfully moves for leave to file a supplemental brief in support of its motion for summary judgment (Dkt. 179).<sup>1</sup> The reason for the supplemental brief is to apprise the Court of recently discovered evidence that raises questions about arguments CHG made in opposing VGT’s motion with respect to CHG’s affirmative defenses of unclean hands and illegality, including CHG’s defenses based on the “Minimum Technical Standards” promulgated by the National Indian Gaming Commission (“NIGC”). Dkt. 179 at Section IV(A).

Specifically, in its opposition, CHG sought to establish a nexus between the minimal technical standards and VGT’s claims of trademark and trade dress infringement:

Even assuming that the Tenth Circuit would impose a nexus requirement, VGT’s regulatory non-compliance is directly related to its use of its trademarks and

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<sup>1</sup> CHG has indicated that it does not consent to VGT’s request for permission to file a supplemental brief.

alleged trade dress. As discussed, VGT's trade dress claims brought under the Lanham Act and similar trademark statutes seeks protection of VGT's Game Cabinet, VGT Themes, VGT Game Play Sound, Award Sound, Bingo Play and Pays, and VGT's Red Screen Free Spins features. See Doc. 103 ¶¶ 22-31. ***The NIGC minimum technical standards, with which VGT has failed to comply, regulate the appearance, use, and functionality of all of these features.***

Dkt. 240 at 48 (emphasis added).

This statement to the Court is contradicted by an earlier statement made by CHG to the NIGC. Specifically, in preparing its response to CHG's recent motion challenging confidentiality designations VGT used with respect to testimony by a VGT witness on issues relating to the NIGC minimum technical standards, *see* Dkt. 284, VGT discovered the following statement that CHG made (through an organization called the "Coalition for Fair Gaming")<sup>2</sup> in the course of lobbying the NIGC on these issues:

The Minimum Technical Standards do not touch games, themes, or the "look and feel" of a machine. They mostly regulate internal security features. Again, we reiterate, ***patrons at a casino will not be able to distinguish between a Grandfathered machine and a newer, safer, and fully compliant machine.***

Dkt. 290, Ex. 1 at 4 (Dec. 11, 2017 letter to NIGC) (underlining added, other emphasis in original).

Accordingly, Plaintiff moves to file a two-page supplemental brief, which is already drafted, to ensure that there is a complete record before the Court.

February 12, 2019

Respectfully submitted,

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<sup>2</sup> *See* Dkt. 290 at 6-7 (discussing evidence supporting conclusion that CHG has been lobbying the NIGC through the "Coalition for Fair Gaming").

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2019, I caused the foregoing to be served on following counsel for Defendants via ECF:

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